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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ET Docket No. 92-9

**REPLY TO COMMENTS IN OPPOSITION
TO PETITION FOR RECONSIDERATION**

The Public Safety Microwave Committee ("PSMC"), by its attorneys, hereby submits the following Reply to Comments filed in opposition to PSMC's Petition for Partial Reconsideration of the Commission's Third Report and Order in the above-captioned proceeding, FCC 93-351 (released August 13, 1993), 58 Fed. Reg. 46547 (September 2, 1993).^{1/}

Most of the parties opposing PSMC's Petition did little more than argue that restoring the exemption for all state and local government microwave licensees would have a negative impact on the development of the PCS industry. They suggest that the Commission's new definition of "public safety" strikes an appropriate "balance" between the interests of PCS operators and public safety. However, the

1/ See Comments of Telocator, Comments of American Personal Communications, Opposition of Cox Enterprises, Inc., UTAM Comments, Comments of Apple Computer, Inc., and Comments of MCI Telecommunications Corporation.

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Commission's statutory mandate is to give "top priority", not balanced treatment, to the protection of life and property. Congress has often stated that "radio services which are necessary for the safety of life and property deserve more consideration in allocating spectrum than those services which are more in the nature of convenience or luxury."^{2/}

Those opposing the PSMC Petition have also overstated the impact of restoring the exemption for all state and local government licensees. The majority of communications on most state and local government microwave systems are clearly for the "protection of life and property" and, therefore, would be exempt from mandatory relocation under any definition of "public safety". While the Commission's arbitrary and capricious narrowing of the public safety exemption will generate unnecessary disputes and have a serious negative impact on some state and local government microwave facilities, those facilities represent a small minority of 2 GHz microwave facilities.

PSMC also takes issue with the gratuitous suggestion of American Personal Communications ("APC") that the "primary motivation for those who wish to broaden the exemptions" is to "reap a profit" in a voluntary negotiation. APC Comments

^{2/} S.Rep. No. 191, 97th Cong., 2d Sess. 14 (1981), reprinted in [1982] U.S. Code Cong. & Ad. News 2237, 2250; see also National Association of Broadcasters v. FCC, 740 F.2d 1190, 1213-14 (D.C. Cir. 1984).

at n.12. State and local government microwave licensees are not businesses seeking a profit. Rather, they are public servants whose principal concern in this matter is to avoid any disruption to vital public safety communications.

Finally, MCI suggests that the Commission establish a system of priority access to the 1710-1850 MHz Government band for displaced licensees, with first priority going to "public safety" licensees, and lower priority for "other" state and local government licensees. MCI Comments at 3-4. PSMC has no objection to giving state and local government licensees priority access to the 1710-1850 MHz band, which would facilitate relocation for those state and local government agencies that choose to relocate. However, the Commission should not attempt to establish arbitrary distinctions among state and local government agencies. Moreover, such priority access to the Government band should supplement, not supplant, the state and local government exemption from mandatory relocation.

CONCLUSION

For the reasons stated above and in its Petition for Partial Reconsideration, the Commission must reinstate rules to exempt state and local government microwave licensees from forced relocation from the 2 GHz bands.

Respectfully submitted,

PUBLIC SAFETY MICROWAVE COMMITTEE

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CERTIFICATE OF SERVICE

I, Robert Gurss, hereby certify that a copy of the foregoing "Reply to Comments in Opposition to Petition for Partial Reconsideration" was served this 23rd day of November, 1993, by first-class mail, postage prepaid, to the following individuals at the addresses listed below:

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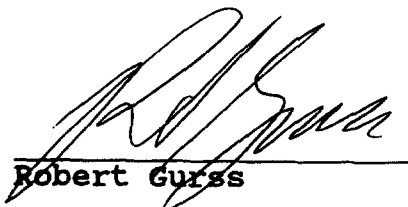
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